

**Texas  
House of Representatives**

**ROBERT JUNELL**

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DEC 12 1997

GOVERNMENTAL INQUIRY  
UNIT

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December 9, 1997

FILE # ML-39971-97  
I.D. # 39971

The Honorable Dan Morales  
Attorney General  
P. O. Box 12548  
Austin, Texas 78711-2548

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DEC 16 1997

Opinion Committee

Dear General Morales:

At the request of the City of San Angelo, I respectfully request an Attorney General's Opinion on Local Government Code 272.001(h).

I have enclosed a brief prepared by the City's Legal Department which outlines the issue in question.

Thank you in advance. If you have questions, or need further information, please do not hesitate to call.

Yours very truly,

A handwritten signature in cursive script, appearing to read "R. Junell".

Rep. Robert Junell  
72nd District  
Chair, House Appropriations Committee

cc: Kaye Edwards

Enclosure

Chairman, Committee on Appropriations



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## BRIEF ON CONSTRUCTION OF TEXAS LOCAL GOVERNMENT CODE, SECTION 272.001(h)

### FACTS

The City of San Angelo ("City") owns Lake Nasworthy and the land adjacent to it, most of which is leased to tenants for residential use. (There are approximately 600 residential lake lots.) The City Council has approved a forty (40) year term for the leases, and most of the lots have residences and other improvements on them, which have been placed there by lessees and pursuant to the lease may be removed at termination of the lease by lessees. Pursuant to Local Government Code, Section 272.001(h), the City can sell a lake lot to the lessee of such lot for "the fair market value of the land as determined by a certified appraiser." The City has had some lots appraised on the basis of the underlying fee and reversionary interest, and lessees now assert that the appraisal should take into account the fact that the land is burdened for some period of time by the lease.

### ISSUE

The issue is the construction of Texas Local Government Code ("LGC"), Section 272.001(h). More specifically, how should the fair market value be determined? Is the City required to sell the land based upon appraisal of the underlying fee without regard to the leasehold estate? Does the term "land" mean real property without regard to the leasehold, or does it refer to the City's underlying interest and reversionary right? Does the statute require or allow the City to instruct the appraiser as to what it wants appraised?

### ANALYSIS

#### 1. Statutory Interpretation Under Code Construction Act

On its face, LGC, Section 272.001(h) does not specify how fair market value must be determined and the terms "fair market value" and "land" are not defined in Chapter 272 of the Local Government Code. According to the Code Construction Act, words or phrases should be read in context and according to common usage or if they have acquired a technical or particular meaning, should be construed accordingly. Tex. Gov't Code, Section 311.011(Vernon 1988). "Fair market value" has been defined by the Texas Supreme Court as "the price property would bring when it is offered for sale by one who desires, but is not obligated to sell, and is bought by one who is under no necessity of buying it." Exxon Corporation v. Middleton, 613 S.W.2d 240, 246 (Texas 1981). The term "land" in a number of statutes contemplates not only the soil but other things attached to it, whether attached in the course of nature, such as trees, herbage, and water or by the hand of man, such as buildings and fences. See Tex. Jur. 3d (1993), Words and Phrases at "Land".

## 2. Construction Under Case Law

No case could be found that squarely answers the question of whether or not an appraisal on a freehold must take into account the burden of a lease in determining the fair market value. The closest case, Cherokee Water Company v. Gregg County Appraisal District ("Cherokee"), 801 S.W.2d 872 (Tex. 1990), involves facts very similar to the case at hand. The issue in Cherokee was the determination of fair market value of land for property tax purposes. Cherokee Water Company ("CWC"), a close corporation owned a lake and over 7,000 acres of surrounding land. The lake front lots were leased to shareholders for a one year term, renewable annually, provided the lessee had paid rent and otherwise complied with company rules and policies. Rent was determined by a board of directors who attempted to break even or make a small profit. Houses and improvements were placed on the property by lessees, treated as personal property of lessees and could be removed at termination of the lease.

The applicable statute in Cherokee was fairly specific about how market value was to be determined, requiring generally accepted appraisal techniques and that each property be appraised based on individual characteristics that affect the market value. CWC contended that the report and testimony of the appraisal district's valuation witness should have been excluded because he failed to consider, as required by the statute, the encumbrance of leases on the lake lots - leases with possible perpetual duration. In discussing this point, the Court of Appeals, at 773 S.W.2d 949, 952-953, acknowledged that a lease of sufficient duration might, like an easement or restrictive covenant, prevent the highest use of the property and thereby burden property. However, it did not find that CWC's leases were such a burden because the leaseholds had been regularly traded for forty (40) years and rent could be adjusted annually. 773 S.W.2d at 956. The lots were not the sort of encumbrance that would prevent the property from becoming a residential subdivision but in fact, demonstrated that the land was suitable for that purpose. The Court of Appeals also acknowledged that the peculiar circumstances affecting the property made it difficult to appraise by any orthodox appraisal method. 773 S.W.2d at 954. The Texas Supreme Court affirmed, following the same reasoning as the Court of Appeals and noting that the trial court considered the leases in making its finding of the fair market value even if the appraiser did not. 801 S.W.2d 872, 876.

Cherokee differs from the case in hand, in that the applicable statute in the case at hand is even less specific about how fair market value will be determined than it was in Cherokee. The statute in question does require that the land be appraised by a certified appraiser. Additionally, City lake leases have a term of forty (40) years, as opposed to the leases in Cherokee, but they are regularly transferred from one lessee to another, with approval of the City. A copy of the pro forma lease is attached for reference.

### **3. Application of Appraisal Principles**

In Texas, pursuant to the Texas Appraiser Licensing and Certification Act, Tex. Rev. Civ. Stat. Ann. art. 6573a.2, Section 5(a)(5) (Vernon Supp. 1998) the Texas Appraiser Licensing and Certification Board may adopt rules requiring appraisers to comply with standards prescribed in Uniform Standards of Professional Appraisal Practice, as adopted by the Appraisal Foundation. The 1997 edition of Uniform Standards of Appraisal Practice is effective from January 1, 1997 to December 31, 1997 and provides in relevant part as follows:

#### **Standards Rule 1-2**

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines: ...

(c) consider easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature;" (p. 12)

#### **Standards Rule 1-4**

In developing a real property appraisal, an appraiser must observe the following specific appraisal guidelines, when applicable: ...

(d) when estimating the value of a leased fee estate or a leasehold estate, consider and analyze the effect on value, if any, of the terms and conditions of the lease(s);"(p. 13-14)

#### **GLOSSARY...**

##### **LEASED FEE ESTATE**

Landlord's (lessor's) interest in fee estate, bound by a stated term and other conditions of a lease or leases conveying rights, usually use and occupancy, to one or more tenants (lessees). (p. 154)

##### **LEASEHOLD ESTATE**

Tenant's (lessee's) property rights, usually use and occupancy, conveyed by a lease establishing a stated term and other conditions.(p. 154)

The Uniform Standards of Professional Appraisal Practice, also includes a "Departure

Provision" that allows an appraiser to enter into an agreement to perform an assignment calling for something less than, or different from, the work that would otherwise be required by the specific guidelines. Exceptions to Standards Rules 1-2 and 1-4 are specifically allowed. (p.6, 80) This allows the appraiser to perform a "Limited Appraisal", provided:

1. the appraiser has determined that the appraisal or consulting process to be performed is not so limited that the resulting assignment would tend to mislead or confuse the client or the intended users of the report;
2. the appraiser has advised the client that the assignment calls for something less than, or different from, the work required by the specific guidelines and that the report will clearly identify and explain the departure(s); and
3. client has agreed that the performance of a limited appraisal or consulting service would be appropriate. (p.6)

Thus, it appears that even though the appraiser has certain requirements and guidelines, a customer, in some situations, can request a departure from the usual complete appraisal.

### SUMMARY

The interpretation of LGC Section 272.001(h) should take into account relevant provisions of the Code Construction Act, relevant case law and relevant appraisal principles.

## LAKE NASWORTHY RESIDENTIAL LOT LEASE

This lease is made and entered into by and between the CITY OF SAN ANGELO, a Texas municipal corporation, ("Lessor"), whose address is 72 West College, P.O. Box 1751, San Angelo, Tom Green County, Texas 76902, and \_\_\_\_\_ ("Lessee").

### I. DEMISE OF LEASED PREMISES

1.1 In consideration of the mutual covenants, conditions and agreements set forth in this lease, Lessor hereby demises and leases to Lessee, and Lessee hereby accepts and leases from Lessor, the following described real property (hereinafter called "leased premises") situated in San Angelo, Tom Green County, Texas:

\_\_\_\_\_, Lake Nasworthy Campsites, according to the map or plat of said Lake Nasworthy Campsites in the custody of the Public Works Department of the City of San Angelo (also commonly known as \_\_\_\_\_).

### II. TERM, FEES AND RENT

#### FIXED COMMENCEMENT AND TERMINATION DATE

2.1 This lease is granted for a period of \_\_\_\_\_ years beginning \_\_\_\_\_ and ending \_\_\_\_\_, in consideration of the initial payment of \$\_\_\_\_\_, which payment includes: \_\_\_\_\_, receipt of which payment is hereby acknowledged, and the further consideration of Lessee's payment of future annual rent in accordance with subsequent paragraphs hereof and Lessee's compliance with the stipulations and conditions hereinafter set forth.

#### TIME AND MANNER OF PAYMENT

2.2 Lessee shall pay annual rent to Lessor at the San Angelo Water Utilities Department, P.O. Box 5820, 122 W. 1st, San Angelo, Texas, 76902-5820, or at such other place as Lessor may from time to time designate by written notice to Lessee. Such rent shall be paid annually on or before \_\_\_\_\_ during the term of this lease in accordance with the following schedule:

Dates	Annual Rent
For the Years _____ through _____	\$ _____
For the Years _____ through _____	\$ _____
For the Years _____ through _____	\$ _____
For the Years _____ through _____	\$ _____ *

\* Annual rent shall be the appraised market value of the leased premises multiplied by a factor of 0.08. Such appraised market value shall be determined and adjusted in accordance with applicable City ordinances in effect at the time of execution of this lease.

### DELINQUENT PAYMENTS

2.3 Lessee shall pay to Lessor a late charge or interest for any rent received by Lessor after the date that the rent is due in accordance with established ordinances, provided however, that this provision for late charges or interest shall not be construed as a waiver of the right of Lessor to terminate this lease at its option as authorized herein.

### HOLD OVER

2.4 Any holding over by Lessee of the herein leased premises after the expiration of this lease shall operate and be construed only as a tenancy from month to month, terminable at the will of Lessor.

## III. DEBTS RELATED TO LEASED PREMISES

### UTILITIES

3.1 Any utility charges shall be paid in full by Lessee when due. Failure to pay such charges shall, at the option of Lessor, result in forfeiture of this lease.

### TAXES

3.2 It is further understood and agreed that Lessee shall pay and discharge all taxes, general and special assessments, and other charges of every description which during the term of this lease may be levied on or assessed against the leased premises and all interest therein and all improvements and other property thereon, whether belonging to Lessor or Lessee to which either of them may become liable. Lessee shall pay all such taxes, charges, and assessments to the public officer charged with the collection thereof not less than fifteen (15) days before the same shall become delinquent, and Lessee agrees to indemnify and save harmless Lessor from all such taxes, charges and assessments. Failure to pay such taxes and special assessments as provided herein shall,

at the option of Lessor, result in forfeiture of this lease.

#### **WATER, SEWAGE, PAVING IMPROVEMENTS**

3.3 In the event the Lessor lays sewer and/or water lines on, adjacent to or in the vicinity of the leased premises, Lessee agrees to pay the pro rata front-foot cost of laying said line or lines as established by and in accordance with city policies then in existence.

3.4 Lessee expressly agrees that if city water or sewer lines are ever located within 200 feet of the leased premises, Lessee will tie on to such service at its own expense at the price established for that specific Lake Nasworthy area.

3.5 In the event the Lessor institutes a paving program abutting the leased premises, Lessee shall pay his pro rata share of paving, curb and gutter costs pursuant to prevailing city policies.

#### **IV. RULES AND REGULATIONS**

4.1 The rules and regulations provided in those certain ordinances of the City Council of the City of San Angelo, ("Council"), adopted April 2, 1951, and now known as the Lake Nasworthy-Twin Buttes Ordinances and any and all subsequent amendments adopted heretofore or hereafter are expressly incorporated herein by reference as terms and conditions of this lease. This lease is expressly made subject to any ordinances adopted in the future by the Council for the regulation of Lake Nasworthy and surrounding property, including but not limited to, safety, sanitation, and ecological requirements. Any breach of said rules and regulations shall, at the option of the Lessor, result in forfeiture of this lease. This lease will be managed by the Public Works Department of the City of San Angelo subject to the approval of the Council.

#### **V. USE OF LEASED PREMISES**

##### **CONSTRUCTION BY LESSEE**

5.1 The premises shall be used only for a single family residence and lawful uses incidental thereto, and in this connection the following shall be applicable:

- a. No structure shall be constructed in excess of two stories in height.
- b. No dwelling or residence shall be located nearer than 75 feet to the 1,872.2 foot elevation line.
- c. No housetrailer, shack, tent, or temporary residence of any type shall be permitted on the leased premises, and no garage or other accessory building shall be used as a residence.



- d. All structures shall have a foundation that complies with Lessor's building code.
- e. No outside toilets shall be constructed or maintained on leased premises, and all plumbing shall be connected with a sanitary sewer or with a septic tank which complies in all respects to all state, county and city sanitation regulations and requirements. No septic tank shall be placed, constructed, or maintained nearer than 75 feet to the 1,872.2 foot elevation line nor nearer than five (5) feet to any property line. All wastewater facilities shall conform to all of the City's wastewater ordinances, where applicable. No sewer or drain shall empty into the lake or be constructed so as to flow or wash into the lake. No concrete storm drains may be constructed without the prior approval of the Public Works Department, Zoning Board of Adjustment, Planning Commission and/or Council, as applicable.
- f. No structure shall be constructed closer than five (5) feet to any property line.
- g. No trees may be removed from the leased premises without the prior written consent of the Public Works Director.
- h. No improvements or construction work of any kind, including but not limited to, houses, boathouses, piers, pumphouses, water wells, storage buildings, fences, excavations, fills, and other types of structures or improvements, shall be built or performed on leased premises without prior approval of the Public Works Department, Zoning Board of Adjustment, Planning Commission and/or Council, as applicable.
- i. Lessee agrees to comply with all provisions of the Official Code of the City of San Angelo ("Code"), as such now exists or may hereafter be amended including, but not limited to, those provisions regarding building permits and permit fees; inspections and fees therefore; building, plumbing, electrical, and fire standards or requirements; and the regulation of septic tanks.
- j. After any permit is granted, Lessee expressly agrees that all improvements or construction work shall be built or performed in strict compliance with the terms of the permit and approval granted, that construction shall commence within six (6) months following the date of the permit, and that all construction shall be completed within one (1) year of the date of the permit.
- k. Lessee may request from the Council a variance or deviation from any term or condition contained herein.
- l. The Council, prior to granting any extension of an existing lease or a new lease covering the leased premises shall have the right to review the leased premises and improvements thereon and submit in writing to the Lessee the requirements, if any, which shall attach to and become a part of this lease, necessary for compliance with the above-mentioned provisions of the Code. Failure of the Lessee to abide by and comply with said requirements will be grounds to terminate this lease or any extension thereof.

## **RESERVATIONS AND EASEMENTS**

5.2 Lessor, its agents or assigns, reserves the privilege and right at any time to execute and deliver valid oil, gas and other mineral leases upon the leased premises, and valid right-of-way easements for gas, oil, water, or wastewater pipelines, telephone, telegraph or electric pole transmission lines on said premises, or any part thereof, and in such event this lease shall be subject and subordinate to the rights, terms and privileges of any such oil, gas and other mineral leases or such easements as may have been executed heretofore or hereafter by Lessor, its agents or assigns. An easement across leased premises is hereby retained by Lessor for the purpose of laying sewer and water lines and/or for necessary rights-of-way for roads, alleys or other thoroughways.

## **VI. ENCUMBRANCE OF LEASEHOLD ESTATE**

### **ENCUMBERING LEASEHOLD INTEREST ONLY**

6.1 Lessee shall not have the right to encumber the fee simple, but Lessee may request Lessor's written consent (pursuant to article XII of this lease) to encumber the leasehold estate, personal property or improvements made by Lessee which may be removed from the realty without injury to the realty; provided however, that no mortgagee nor anyone who claims by, through or under such mortgage or deed of trust shall, by virtue of such mortgage or deed trust, acquire any greater or more extended rights than Lessee has under this lease but such mortgage or deed of trust shall be in every respect subject, subservient and subordinate to all of the conditions, provisions, requirements, covenants and obligations of this lease. The mortgagee under any such deed of trust or mortgage shall have the right to assume this lease and perform its terms and conditions to protect itself.

### **NOTICES TO LENDER**

6.2 Any lender or mortgagee may notify Lessor in writing that a mortgage or deed of trust has been given and executed by Lessee and furnish Lessor with the address to which it desires copies of notices to be mailed. Lessor agrees to mail to lender or mortgagee or its designated agent or representative, at the address given, a copy of any notice which Lessor gives, mails, or serves on Lessee under the terms of this lease after receipt of such a notice from the lender or mortgagee.

## **VII. CONDITION OF PREMISES**

### **NO WARRANTY**

7.1 LESSOR GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE LEASED PREMISES OR ANY IMPROVEMENTS THEREON, INCLUDING WARRANTY OF HABITABILITY OR FITNESS FOR A PARTICULAR USE.

## **AVAILABILITY AND USE OF LAKE WATER**

**7.2** Lessor in no way guarantees the accessibility of water to the leased premises nor the level of water in Lake Nasworthy.

Lessee can use water from the lake, river, and/or wells on the premises for domestic purposes and water of existing trees and shrubs; but no water will be removed from the premises. Use of water for irrigation is expressly prohibited. Lessee shall use water in a conservative manner, and any abusive use of water shall be grounds for denying the use of water to the Lessee. Lessee shall pay the applicable water use charge as set by the Lessor, for water or raw water usage, as the case may be.

## **VIII. REPAIRS AND MAINTENANCE**

### **LESSEE'S DUTY TO REPAIR AND MAINTAIN**

**8.1** Lessee agrees to keep and maintain any and all structures erected or caused to be erected or placed on the leased premises in good and tenantable condition, to maintain its appearance, and to landscape and keep said premises cleared of all objectionable matter, things, and vegetation. Leased premises shall not be used for the outside storage of usable materials for unreasonable lengths of time. In the event Lessee shall fail to maintain leased premises in a manner acceptable to Lessor, after notice to Lessee as prescribed by city ordinance, the Lessor shall cause leased premises to be cleaned, cleared, and mowed. Lessee expressly authorizes the cost of any such clearing, cleaning, and mowing to be billed to it or added to the next annual rental payment, with interest at the rate of ten percent (10%) per annum beginning thirty (30) days from the date on which the work was completed, and continuing until such cost is paid in full.

### **DAMAGE OR DESTRUCTION**

**8.2** The parties hereto acknowledge that the leased premises are within an area subject to overflow and flooding and it is expressly agreed between the parties that neither Lessor nor any of its agents or employees shall be liable to Lessee for any damages caused in any manner, negligent or otherwise, by high water or floods at Lake Nasworthy, nor by the rivers or creeks which serve as its sources of supply or diversion channels, nor by reason of any work deemed necessary in Lessor's sole judgment in the maintenance of said Lake and sources of supply or diversion channels and all damages occasioned thereby are hereby waived, and when Lessor (or any agent thereof) deems it necessary to enter on the leased premises for any of the above purposes, its judgment shall be conclusive.

## **IX. SUSPENSION OF PRIVILEGES**

### **HEALTH MATTERS**

**9.1** It is expressly understood and agreed that Lessor may at any time, without notice to Lessee or any mortgagee, suspend or revoke any and all privileges granted herein for

such length of time as in its sole judgment is necessary for the purpose of suppressing or arresting an epidemic of any contagious or infectious disease, or when, in its sole judgment, any suspension of privileges is necessary to protect the health of the water consumers of San Angelo, Texas. In the event privileges are suspended by Lessor, rent shall be prorated; and if the lease is revoked, Lessor shall pay Lessee an amount equal to the market value of any structures or improvements hereto made or erected on leased premises in compliance with the terms of this lease.

## **PUBLIC PURPOSES**

9.2 If Lessor shall deem that leased premises are required for any public purpose or that condemnation is necessary, Lessor shall have the right to terminate this lease by giving ninety (90) days written notice of such termination to Lessee and any mortgagee who has notified the Public Works Department of its lien and its address for notice purposes; and Lessee agrees to promptly deliver possession of leased premises to Lessor; and this lease shall terminate upon the expiration of ninety (90) days after the date of such notice; and in such event Lessor shall pay Lessee an amount equal to the market value of any structures or improvements hereto made or erected on leased premises in compliance with the terms of this lease.

## **X. RELEASE**

10.1 Lessee expressly releases Lessor, its officers, agents, and employees from any and all claims for damages of any kind by reason of the condition of the premises hereby leased, or any improvements thereon or any damages incurred in the enjoyment or exercise of the privileges granted hereunder, or for damage to its person or property caused by the opening of the gates at Nasworthy Dam, the lowering of the normal water elevation in the lake, or due to flood or high water, or any fluctuating water levels which may arise in the use and operation of Lake Nasworthy, or in the joint use and operation of Lake Nasworthy, San Angelo Reservoir, and Twin Buttes Reservoir for the purposes of recreation, irrigation, and water supply, or for any other purpose.

## **XI. INDEMNIFICATION**

11.1 Lessee further agrees to indemnify and hold Lessor, its officers, agents, and employees, free and harmless from any claims for damages or injury, including death, to persons or property, or any liability incurred as a result of the exercise of the privileges conferred by this lease, and agrees to reimburse Lessor for any expenses incurred in the defense of any such claim, including reasonable attorney's fees and court costs actually incurred.

## **XII. TRANSFER, ASSIGNMENT, AND SUBLETTING**

12.1 Lessee may not transfer or assign the leased premises, in whole or in part, without the prior written consent of the Lessor, which consent will not be unreasonably withheld.

Lessee may not sublet the leased premises, in whole or in part, without the prior written consent of the Lessor. Any such transfer, assignment or sublease shall be evidenced in writing, properly executed and acknowledged by both parties thereto; a copy shall be delivered to Lessor and the original shall be recorded in the office of the County Clerk of Tom Green County, Texas. It is agreed, however, that each such transfer, assignment or sublease shall be subject to the obligations to Lessor as set forth in this lease and shall not release Lessee or Lessee's obligations under the lease.

### **XIII. ABANDONMENT, DEFAULT AND REMEDIES**

#### **NOTICE OF INTENT TO TERMINATE LEASE**

13.1 In the event Lessee shall (1) abandon the premises or (2) default in performance of any of the covenants and conditions required herein to be kept and performed by Lessee and such default continues for a period of thirty (30) days, Lessor shall have the right to terminate this lease. Lessor will give thirty (30) days written notice of its intention to terminate the lease to Lessee and any mortgagee who has notified the Public Works Department of its lien and its address for notice purposes, and Lessee and any mortgagee will have such thirty (30) days within which to cure such default and thereby avoid termination. Notice shall be sufficient if delivered to Lessee at the address specified in this lease or at such other address as Lessee may in writing designate to Lessor. Upon Lessor's election to terminate, this lease shall cease.

#### **POSSESSION**

13.2 Lessee agrees at the termination of this lease to deliver possession peacefully to the Lessor or its agents or employees; and if it fails to give peaceful possession, Lessor may take forceful possession of said premises and eject all parties therefrom without being guilty of trespass; and all damages occasioned thereby are hereby waived.

#### **REMOVAL OF IMPROVEMENTS**

13.3 All buildings and other improvements placed on the property by Lessee (except trees, shrubs, flowers and plants) which may be removed without injury to the realty shall remain the property of Lessee. It is understood and agreed, however, that buildings and improvements shall be held by the Lessor until all rentals due Lessor by Lessee shall have been paid, and should any amount remain unpaid for more than thirty (30) days after termination of this lease, the Lessor shall have the right to sell such buildings and improvements and apply the proceeds to the amount due Lessor, with interest at the annual rate of ten percent (10%), and to any costs incident to the sale, and pay the balance remaining, if any, to Lessee. All property remaining on the premises after the expiration of ninety (90) days following the termination of this lease, however terminated, shall be deemed abandoned by Lessee and shall become the property of Lessor.

## **OTHER REMEDIES**

13.4 Any termination of this lease shall not relieve Lessee from the payment of any sum or sums that are due and payable to Lessor under the lease, or any claim for damages then or previously accruing against Lessee under this lease, and any such termination shall not prevent Lessor from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Lessee for any default under the lease. All rights, options, and remedies of Lessor contained in this lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Lessor shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in this lease. No waiver by Lessor of a breach of any of the covenants, conditions, or restrictions of this lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction contained in this lease.

## **XIV. MISCELLANEOUS**

### **RELATIONSHIP OF LESSOR AND LESSEE**

14.1 The relationship between Lessor and Lessee at all times shall remain solely that of landlord and tenant and shall not be deemed a partnership or joint venture.

### **PARTIES BOUND**

14.2 This agreement shall be binding upon and inure to the benefit of the parties of the lease and their respective heirs, executors, administrators, legal representatives, successors and assigns.

### **HEADINGS**

14.3 The paragraph headings contained herein are for convenience and reference and are not intended to define, extend or limit the scope of any provisions of this lease.

### **SUPERSEDES PRIOR AGREEMENTS**

14.4 If this lease replaces another lease, all prior agreements are superseded by this lease.

### **ENTIRE AGREEMENT/AMENDMENTS**

14.5 This lease constitutes the entire agreement between the parties, and Lessor is not bound by any agreement, condition or stipulation, understanding or representation made by any of Lessor's agents not contained herein. No amendment to this lease shall be effective unless such is in writing and signed by both parties.

## **VIOLATIONS OF LEASE**

14.6 IT IS FURTHER UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT THE VIOLATION OF ANY TERM, STIPULATION, CONDITION, OR COVENANT, SHALL ENTITLE THE LESSOR, AT ITS OPTION, TO TERMINATE THIS LEASE. FAILURE TO EXERCISE SUCH OPTION AT ANY TIME SHALL NEVER BE CONSTRUED AS A WAIVER OF ANY CONDITION OF THIS LEASE.

## **TEXAS LAW TO APPLY**

14.7 The parties hereby agree that Texas law will control the interpretation or enforcement of this lease. This lease has been executed in Texas, and all obligations hereunder are performable in Tom Green County, Texas.

## **INVALID OR ILLEGAL PROVISIONS**

14.8 If any provision of this lease is held invalid as to any person or set of circumstances, such holding shall not affect the validity of any remaining provision of this lease or any provision's application to other persons not similarly situated or to other circumstances.

## **REIMBURSEMENT OF LESSOR'S EXPENSES**

14.9 Lessee shall pay on demand all of Lessor's expenses including, but not limited to, attorney's fees and court costs incurred in enforcing any of Lessee's obligations under this lease, which include, but are not limited to, collection of rental fees and collection of utility payments, taxes and other legitimate assessments.

## **NOTICES**

14.9 All notices concerning this lease shall be in writing and delivered to the parties at the addresses below:

Lessee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Lessor: City of San Angelo  
P.O. Box 1751  
San Angelo, Texas 76902

EXECUTED in duplicate originals by:

CITY OF SAN ANGELO, LESSOR

BY:

\_\_\_\_\_  
W. H. WILDE,  
Public Works Director

LESSEE

\_\_\_\_\_

LESSEE

\_\_\_\_\_

STATE OF TEXAS       }  
COUNTY OF TOM GREEN }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by W. H. Wilde, Public Works Director, of the City of San Angelo, a Texas municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       }  
COUNTY OF TOM GREEN }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       }  
COUNTY OF TOM GREEN }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas



EXECUTED in duplicate originals by:

CITY OF SAN ANGELO, LESSOR

BY:

\_\_\_\_\_  
W. H. WILDE,  
Public Works Director

LESSEE

\_\_\_\_\_  
LESSEE  
\_\_\_\_\_

STATE OF TEXAS       }  
COUNTY OF TOM GREEN }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by W. H. Wilde, Public Works Director, of the City of San Angelo, a Texas municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       }  
COUNTY OF TOM GREEN }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS       }  
COUNTY OF TOM GREEN }

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas